IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NOTICE OF MOTION NO.59 OF 2006
IN INSOLVENCY
NOTICE NO.N/34 OF 2006

Re.Gautam Builders & Others
... Petitioning Debtors

Ex-parte :-
Maruti Dhulaji Thakur Petitioning Creditor

Mr.C.M.Kothari for Judgment Debtors.
Mr.Swapnil K. Bargav i/b Mr.Vinod Misra for the Judgment Creditor

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 18,2007

P.C.:

1. This notice of motion is taken out by the judgment debtors for setting aside the insolvency notice which is taken out on the basis of the decree dated 17th July 2002 passed by the learned single Judge of this court in summary suit No.5490 of 1999. The learned counsel for the judgment debtor states that an Appeal preferred by the Judgment debtors against the decree is pending before the Division Bench of this court. He, however, stated that the stay has not been granted to the execution of the decree by the Division Bench. He states that in fact a notice of motion for stay has not been moved. The learned counsel seeks time by stating that the judgment debtor will deposit the principal amount as per the decree.

2. Perusal of the record shows that on 16th January 2007 the learned counsel for the judgment debtors sought time from this court to obtain necessary orders of stay of execution of the decree. This court granted time to the judgment debtors till 20th March 2007 to enable the judgment debtors to apply before

the Division Bench and obtain order of stay. On 3rd April 2007 when this notice of motion appeared before this court, on the request made by the learned counsel for the judgment Debtors, time was granted as a last chance till 5th June 2007. On 5th June 2007, none appeared for the judgment debtors and, therefore, notice of motion was adjourned till 19th June 2007 for dismissal. On 19th June 2007, none appeared for the judgment debtors and therefore, notice of motion was adjourned till 3rd July 2007 for dismissal.

3. From the submissions of the learned counsel for the Judgment debtors it is crystal clear that till today the judgment debtors have not even moved the Division Bench for grant of stay. To enable the Judgment Debtors to do so, time was granted by this court on 16th January 2007 till 28th March 2007. It is now an admitted position that even a notice of motion for grant of stay has not been moved. On 5th June 2007, an adjournment was granted to the Judgment Debtors as a last chance. On 5th June 2007 and 19th June 2007 the notice of motion was adjourned and was ordered to be kept for dismissal.

4. Even as of today, the judgment debtors have not offered to deposit the entire decretal amount and what has been offered is the principal amount payable as per the decree. In view of the aforesaid facts and the earlier orders passed by this court, this notice of motion cannot be granted and the same is accordingly dismissed.

JUDGE